provision of similar service cannot rebut the fact that Respondents are using Complainants' services or facilities. Under Section 13-510, the Commission concludes that Complainants are entitled to compensation for the use of their services or facilities to complete a retail 1-800 call.

The calculation of what is proper compensation for a retail 1-800 call is a straightforward decision in light of our conclusions above. Staff's recommended compensation amount was equally applicable to both billable operator service calls and retail 1-800 calls. We have determined that, for either type of call, the use of Complainants' services or facilities cannot be distinguished. Therefore, the Commission concludes that Complainants should be compensated at a rate of $0.25 for each completed retail 1-800 call.

V. COMPENSATION TIME PERIOD

The final issue before the Commission is the question of whether the Complainants are entitled to retroactive compensation and, if so, how should that process be administered. Complainants assert that they are entitled to compensation back to October 20, 1990, for the use of Complainants' interconnected services or facilities. To collect amounts for the period prior to the entry of this Order, Complainants suggest that, to the extent possible, actual call volume information should be used. In the event such information is not available, Complainants suggest that compensation be based on a per phone basis, after a three-month study is conducted to calculate the monthly volume of dial-around calls.

Sprint and AT&T argue against any retroactive compensation asserting that it would constitute illegal retroactive ratemaking. Sprint contends that the Commission does not have the authority to order retroactive compensation, and that such compensation is contrary to ratemaking principles in Illinois. See Citizens Utilities Company v. ICC, 529 N.E.2d 510. Sprint asserts that Section 13-510 does not authorize retroactive compensation, and nowhere else in the Act is the Commission empowered to order such relief. Absent such authority, Sprint concludes that the Commission is prohibited from ordering such relief.

AT&T also argues that administration of any retroactive compensation would be very difficult. First, it would be almost impossible to track the actual calls completed. Second, AT&T argues that Complainants' proposed three-month study would be unfair as well. It states that various Complainants blocked their payphones so that an end user could not access the OSP of choice. In fact, they note that several Complainants still had not

unblocked their phones by the time the instant complaint was filed. AT&T argues that the Commission should not apply current call volumes to payphones which may have blocked intrastate dial-around calls, and to which there is no way to compare historic volumes.

Staff argues that no compensation should be allowed prior to May 14, 1992, the effective date of Section 13-510. It points to the Hearing Examiner's ruling of February 24, 1993, which rejected Complainants' request for interim compensation, wherein the Hearing Examiner indicated that any award of compensation would be applied from the effective date of the statute. Given said ruling, Staff concludes that it would be inappropriate to apply any level of compensation prior to May 14, 1992.

In reply to Sprint's arguments concerning the Commission's authority to order retroactive compensation, Complainants contend that the court's opinion in Champaign County Telephone Company v. ICC, 37 Ill.2d 312 (1967), requires the Commission to award such compensation. In that case, GTE ceased making certain payments to the complainants as of June 1, 1964. The Commission subsequently entered an order sometime after 1965 which directed GTE to pay the complainants for all toll calls from June 1, 1964 until the date of the order, based upon the rate schedules established in that order. Complainants herein contend that from the Champaign County case, the Commission has the authority to award such retroactive compensation.

Commission Conclusion

The Commission concludes that the Complainants should be given compensation for the use of their services or facilities for the completion of intrastate billable operator service calls, starting May 14, 1992. Prior to that date, Respondents were under no legal obligation to compensate Complainants for the completion of such calls. Thus, compensation for the use of Complainants' facilities or services prior to that date is unwarranted. However, as explained hereafter, the Commission believes that retroactive compensation should not be allowed for retail 1-800 calls.

The arguments alleging a violation of the rules against retroactive ratemaking are not persuasive. This fact situation is in stark contrast to where retroactive ratemaking concerns usually arise. In this instance, Respondents had an obligation as of May 14, 1992, to compensate Complainants for the use of their facilities or services for billable operator services. However, no such compensation was paid. While the proper level of compensation is being set herein, compensation was due since May 14, 1992. Meanwhile, under the usual retroactive ratemaking scenario, there is an attempt made to increase current or proposed rates to offset

a revenue shortfall that previously occurred, under rates which were deemed just and reasonable at the time. There, customers were paying the rate which was found to be reasonable, yet they are now being asked to pay an additional increment for that previous time period. The latter scenario is proscribed by law. The former scenario, however, is not retroactive ratemaking. See Champaign County Telephone Company v. ICC, 37 Ill.2d 312 (1967).

In addition to the foregoing, the Commission further believes that it was not the intent of the General Assembly to delay the practical application of Section 13-510. Complainants should not be harmed, nor should Respondents benefit, due to the fact that these parties could not arrive at a level of compensation that was mutually agreed upon. The compensation period began May 14, 1992. Section 13-510 does not subject the receipt of compensation to a condition precedent: whether it be the execution of a compensation agreement between the parties, or the Commission's establishment of a level of compensation. We conclude, therefore, that ordering the Respondents to pay compensation from May 14, 1992, is not violative of the rules against retroactive ratemaking, or contrary to any other section of the Act.

For purposes of analyzing the retroactive compensation issue, the Commission concludes that there is a distinction between billable operator service calls and retail 1-800 calls. Each of the Respondents to this proceeding knew, or should have known, that as of May 14, 1992, a payphone provider which provided services or facilities to complete a billable operator service call was entitled to compensation from the OSP. Such a requirement is distinctly set forth in Section 13-510 The same, however, cannot be said for retail 1-800 calls.

Section 13-510 does not specifically refer to retail 1-800 calls. That section never having been interpreted prior to this Order, the Commission believes that it would be impossible for a party to ascertain with any degree of certainty whether the phrase ". . . for any other use that the Commission determines appropriate consistent with the provisions of this Act[,]" would encompass retail 1-800 calls. Consequently, the Commission concludes that it would be improper to impose upon the Respondents the burden of paying retroactive compensation for retail 1-800 calls, because only by this Order have such calls been included within the scope of Section 13-510. We believe that such an interpretation should be applied only prospectively.

The Commission now turns to the issue of how to compensate Complainants for the use of their services or facilities for completed billable operator service calls prior to the date of this Order. Upon review of the evidence, the Commission concurs with

Complainants that the use of data establishing the actual volume of completed billable operator service calls is the best method for calculating what amount of compensation is due and owing since May 14, 1992. The Commission, therefore, directs Respondents to provide Complainants with all data which identify completed billable operator service calls made from Complainants payphones. From this information, a calculation can be made of what is properly due and owning.

The Commission, however, is cognizant of the fact that it may be impossible for Respondents to provide data for all completed billable operator service calls from May 14, 1992. Notwithstanding this problem, the Commission is not persuaded to utilize Complainants' alternative solution to this dilemma. As AT&T correctly argued, several of the Complainants had their certification revoked during this period, while others programmed their payphones to block intrastate dial-around calls. Clearly, such providers should not be compensated on a per phone basis when there was no way the Respondents could receive a dial-around call from certain of these payphones.

Absent any reasonable solution in the record to resolve the problem of completed, yet unaccounted for, billable operator service calls made prior to the entry of this Order, the Commission directs both Respondents and Complainants to work in concert to resolve this quandary. In light of the Commission's conclusions hereinabove, specifically our conclusions regarding retroactive compensation, it should be clear that only certificated payphone providers, with unblocked payphones, are entitled to compensation. To ensure that Complainants and Respondents work to resolve this matter in a timely fashion, the Commission directs these parties to submit to the Chief Clerk of the Commission, within sixty days from entry of this Order, a report detailing what method[s] will be utilized to comply with our findings and conclusions herein.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Complainants are providers of pay telephone services within the State of Illinois;

(2) Respondents are duly certificated telecommunications carriers within the State of Illinois;

(3) the Commission has jurisdiction over the parties and the subject matter of this proceeding;

(4) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are hereby adopted as findings of fact and conclusions of law;

(5) pursuant to Section 13-510 of the Act, Complainants are entitled to compensation for the use of their facilities or services for the completion of intrastate billable operator service calls and retail 1-800 calls;

(6) the per call method of compensation should be utilized to measure the amount of compensation due and owning Complainants;

(7) the just and reasonable level of compensation is set at $0.30 per call for both billable operator service calls and retail 1-800 calls; this level of compensation is based an application of Staff's surrogate cost study, as modified by this Order;

(8) Complainants are entitled to retroactive compensation for billable operator service calls back to May 14, 1992; Complainants are not entitled to retroactive compensation for retail 1-800 calls;

(9) that all motions or objections not heretofore disposed of should be disposed of in a manner consistent with the findings and conclusions of this Order;

(10) that the instant complaint is granted in part and denied in part.

IT IS THEREFORE ORDERED that the compliant filed on October 23, 1992, by the above-captioned Complainants be, and is hereby, granted in part and denied in part.

IT IS FURTHER ORDERED that Complainants are entitled to, on a prospective basis, compensation at the rate of $0.30 per completed call, for billable operator service calls and retail 1-800 calls.

IT IS FURTHER ORDERED that Complainants are entitled to retroactive compensation at the rate of $0.30 per completed call, starting May 14, 1992 and ending on the date of this Order, for billable operator service calls only. Complainants are not entitled to compensation for retail 1-800 calls completed prior to the date of this Order.

IT IS FURTHER ORDERED that the Commission directs the Complainants and Respondents to submit to the Chief Clerk of the Commission, within sixty days from entry of this Order, a report

detailing what method[s] will be utilized to resolve the problem of completed, yet unaccounted for, billable operator service calls made prior to the entry of this Order. Such report should detail what measures have been or will be taken to comply with our findings and conclusions relating to the retroactive compensation issue.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 3rd day of October, 1995.

Chairman